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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms

Report of the Secretary-General prepared pursuant to Commission resolution 1995/34

Introduction

1. In its resolution 1995/34 of 3 March 1995, the Commission on Human Rights requested States to provide information to the Secretary-General about legislation already adopted, as well as that in the process of being adopted, relating to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms, and requested the Secretary-General to submit a report on that subject, taking into account the information provided by States, to the Commission at its fifty-second session.

2. Pursuant to resolution 1995/34, the Secretary-General, on 16 May 1995, addressed requests for information to Governments.

3. By 15 November 1995, replies had been received from the Governments of Argentina, the Czech Republic, Chile, China, Colombia, Ghana, Mauritius, Namibia, Nepal, the Philippines, the Sudan and Sweden.

4. The present report contains a summary of the replies received. Any additional replies will be reproduced in addenda to the present document.

INFORMATION RECEIVED FROM STATES

Argentina

[Original: Spanish]
[5 October 1995]

1. The Government of the Argentine Republic presents the following information on the legislation in force with regard to compensation for victims of the events which took place between 24 March 1976 and 10 December 1983.

2. In 1980 a group of persons held at the disposal of the National Executive failed to obtain judicial satisfaction for their complaints since the courts ruled them to be time-barred. Having exhausted internal remedies, they submitted an application to the Inter-American Commission on Human Rights. In the context of the proceedings instituted, an amicable solution was achieved and was reflected in Decree No. 70/91 designed to achieve a reasonable solution for the applicants and for all those in the same legal situation.

3. This measure benefited all those held at the disposal of the National Executive before 10 December 1983 who had instituted legal proceedings with a view to securing compensation for damage before 10 December 1985 and whose cases had been declared extinguished by enforceable judgement. The possibility was also envisaged of such compensation being made available to those whose cases were pending.

4. For all of the 280 applications submitted, a payment was made in settlement. However, in view of decision 1768/94 raising the basic amount for the purposes of calculation, settlements are being reconsidered in order to meet the difference.

5. Act No. 24,043 increased the number of beneficiaries to include those who had been held at the disposal of the National Executive up until 10 December 1983 and who had been detained as a result of action taken by military courts, whether or not they had instituted legal proceedings for damages, provided that they had not received compensation as a result of a judicial ruling in relation to their individual cases.

6. Around 9,000 petitions (8,800) were received, of which 5,000 have already been settled and 2,000 are pending. Only 700 have been rejected as being inadmissible and around 1,300 have recently been submitted and are now being processed.

7. Act No. 24,436, promulgated on 11 January 1995, provided that the deadline for the submission of applications seeking the benefits envisaged in Act No. 24,043 should be extended by 180 days. The extended deadline expired on 27 September.

8. Owing to the broad interpretation of the law favoured by the Office of the Under-Secretary for Human and Social Rights in the Ministry of the Interior, the following cases are covered by Act No. 24,043: (a) persons placed at the disposal of the military authorities, police, etc.; (b) conscripts placed at the disposal of military courts; (c) persons held in secret detention centres; (d) children born while their parents were in captivity.

9. The scope of the applications submitted as a result of the extension granted cannot yet be evaluated since this report is being written at the time of the submission deadline.

10. Act No. 24,411 was adopted on 7 December 1994. It provides for the granting of compensation to eligible claimants in respect of persons who, at the time of its promulgation (28 December 1994), were in a situation of enforced disappearance or who had died as a result of acts by the armed or security forces or any paramilitary group prior to 10 December 1983.

11. Similarly, Act No. 24,499 provided that the deadline for the submission of applications for benefits under Act No. 24,411 should be extended by a period of five years. Accordingly, on 29 August 1995 Decree No. 403/95 was adopted to regulate the law concerned.

12. The provisions under discussion fit into the framework of the progressive reparation policy adopted by the National Government with regard to past events immediately prior to the re-establishment of democracy. In this respect, various measures were adopted, all of them enjoying support. They include:

- Act No. 23,466 of 30 October 1986 which grants a non-contributory pension to the relatives of persons who disappeared before 10 December 1983;

- Act No. 23,852 of 27 September 1990 which exempts from military service those whose parents, brothers or sisters disappeared prior to 10 December 1983 in circumstances in which their enforced disappearance could be presumed, and who applied for such exemption. This Act is no longer valid, since compulsory military service has been abolished;

- Act No. 24,321 of 11 May 1994, which authorizes the declaration of absence through enforced disappearance of any person who, prior to 10 December 1983, involuntarily disappeared from his place of domicile or residence, without his whereabouts being known; prior to the adoption of Act No. 24,411, which led to an increase in the number of applications under Act No. 24,321, approximately 2,500 applications had been received.

Czech Republic

[Original: English]
[1 September 1995]

I.

Assessment of the proposed principles and guidelines as regards their impact on internal legislation in the event of their adoption from the point of view of criminal law

1. Due to the fact that the various amendments to the Czech Criminal Code and the Code of Criminal Procedure have consistently been aimed at the conformity of our legislation to international accords and agreements, it may be assumed that, in the event that the international community recognizes the right to restitution, compensation and rehabilitation of victims of gross violations of human rights and fundamental freedoms, it will not be necessary to make any far-reaching changes in our criminal law. For the time being it is not possible to provide a more detailed commentary, since we have so far received for consideration only the basic principles and guidelines prepared by the Special Rapporteur of the Sub-Commission, Mr. van Boven, which are very general and will doubtless be elaborated on in the future.

2. By way of example, we would mention the introduction of the criminal offence of torture and other inhuman and cruel treatment pursuant to section 259a of the Criminal Code by virtue of Law No. 290/1993.

3. In this context we would refer also to article 10 of the Constitution, under which ratified and promulgated international accords on human rights and fundamental freedoms to which the Czech Republic has committed itself are immediately binding and take precedence over domestic law.

Protection of persons against gross violations of human rights and fundamental freedoms under criminal law

4. Such protection is ensured above all by imposing punitive sanctions on the following criminal offences:

Genocide under section 259 of the Criminal Code;

Torture and other inhuman or cruel treatment under section 259a of the Criminal Code;

Support and propagation of movements which aim at suppressing the rights and freedoms of citizens under sections 260 and 261 of the Criminal Code;

Violence against a group of inhabitants and against individuals under section 196 of the Criminal Code;

Traffic in children under section 216a of the Criminal Code;

Deprivation of personal liberty under section 232 of the Criminal Code;

Abduction abroad under section 233 of the Criminal Code;

Traffic in women under section 246 of the Criminal Code;

War cruelty under section 263 of the Criminal Code;

Persecution of inhabitants under section 263a of the Criminal Code, etc.

Exercise of the rights of the injured (victim of a criminal offence) and compensation for damages in criminal proceedings

5. In Czech criminal proceedings, a person injured by a criminal offence has a significant position which is based on the fundamental principles of criminal procedure, fully corresponds with them and constitutes the necessary precondition of the fulfilment of its basic tasks:

To duly investigate criminal offences and justly punish offenders in accordance with the law;

To ensure the observation of the law in criminal proceedings;

To prevent and eliminate criminal activities;

To encourage the education of citizens in the spirit of consistent observation of the laws and rules of good civic relations.

6. "Adhezní rízení" - adhesion proceedings - form a part of criminal proceedings and concern the right of the injured to compensation for damage resulting from a criminal offence. Adhesion proceedings are not independent of the criminal proceedings in terms of time and form, they are integrated into the proceedings, especially as regards evidence, and are therefore governed by the principle of officiality (the principle is one of the main principles ruling criminal proceedings in Czech Criminal Law and upon this principle all organs acting in the criminal proceedings are bound to act under official obligation. The law (Code of Criminal Procedure) thus ensures compensation for damage resulting from criminal offences. At the same time, it is a significant legal tool for damage prevention.

7. According to the comparatively wide definition contained in the Code of Criminal Procedure, the injured is a person to whom the offender caused physical injury or moral damage, property damage or other damage (sect. 43, para. 1 of the Code of Criminal Procedure). A person who cannot claim compensation for actual damage (pecuniary compensation) is regarded as the injured as well. Under the Code of Criminal Procedure, the injured has the position of a party to criminal proceedings (sect. 12, para. 6 of the Code of Criminal Procedure). This enables him to take an active part in the criminal proceedings and to make proposals and interventions aimed at proper investigation and correct decision in the matter. The injured may be a natural person, legal entity or the State.

8. The basic characteristics of the legislation regarding compensation in damage proceedings are:

The only subject of the adhesion proceedings is the injured, who by virtue of the law has the right to demand the accused to compensate the damage;

In criminal proceedings, the court has the right to decide on claims that would otherwise not belong to the sphere of jurisdiction of judicial organs;

In the condemning decision, the court has the right to impose the duty to compensate damage also in cases when this claim in civil proceedings before the court should have been preceded by proceedings of a different type.

II.

9. In the sphere of civil law, Law No. 58/1969 on liability for damage resulting from the decision of a State organ or incorrect official action has been applied in the Czech Republic since 1969. Under this law, the State is liable for damage caused to citizens:

(a) By unlawful decisions;

(b) By decisions concerning custody and penalty;

(c) By incorrect official action.

(a) Unlawful decisions

10. Liability is conditional above all on the fact that:

The decision was adopted by a State organ;

The decision was unlawful;

All ordinary channels of appeal against the decision have been exhausted.

11. The success of action for the recovery of damages is conditional on the invalidation of the unlawful decision within the framework of proceedings conducted by the organ authorized to revert the unlawful decision on the basis of the following extraordinary channels of appeal:

A proposal to initiate rehearing;

An application for review by a superior court;

A complaint concerning breach of the law;

Review of the decision in an administrative instead of appellate proceeding.

12. The lawfulness of the decisions adopted by administrative authorities is reviewed by courts.

(b) Decisions concerning custody and penalty

13. Liability for damages resulting from decisions concerning custody or penalty is conditional on whether the custody or penalty has been enforced and the indictment has subsequently been waived or the criminal prosecution suspended.

(c) Damage resulting from incorrect official action

14. The liable party is the State and the entitled parties are the natural persons or legal entities who participated in the proceedings in which the unlawful decision was adopted or in which the incorrect official action has been taken.

15. The manner and form of compensation for damage is determined by the general provisions of sections 420 and following of the Civil Code.

16. The liability of the State is objective and exemption from this responsibility is impossible because the law does not provide any grounds for such exemption.

17. In the case of liability under (a) and (b), so-called preliminary agreement on the claim with the appropriate central authority is required under section 9 of Law No. 58/1969.

18. Besides the above-described protection under criminal law, the protection of citizens and various minorities against violations of human rights is ensured also by the fact that the Czech Republic has acceded to a number of international accords regarding the protection of the aforesaid persons and entities. Pursuant to article 10 of the Constitution, international accords of this type, to which the Czech Republic has committed itself, are superior to domestic law.

19. Protection is ensured, moreover, by the appropriate provisions of the Charter of Fundamental Rights and Freedoms, which is directly applicable in judicial proceedings, with the exception of cases mentioned in article 41 of the Charter.

20. Compensation for damages is provided in the manner and to the extent determined by the Civil Code, unless the special provisions mentioned below determine otherwise.

21. Pursuant to the provisions of sections 442 to 449 of the Civil Code, the following compensation is provided:

Section 442 - compensation for actual damage and lost profits;

Section 443 - criterion for determination of property damage;

Section 444 - physical injury;

Section 445 - compensation for lost earnings;

Sections 446 and 447 - compensation for the period of incapacity to work and for the period following the period of incapacity to work;

Section 447 (a) - compensation for lost pension;

Section 448 - compensation in the event of death;

Section 449 - compensation for medical expenses.

22. Harm to reputation or dignity may be compensated pursuant to sections 11 and following of the Civil Code.

23. So much for legal provisions which are taken for granted in a normally developing democratic State.

24. Gross violations of fundamental human rights occur above all in totalitarian regimes, in armed conflicts between States as well as in internal conflicts (civil war, liberation struggle, etc.). Such conflicts, especially the current ones, are accompanied by mass suffering of the civilian population. Such violations of fundamental human rights may be compensated only provided that the regime changes and the old regime is replaced by a new, democratic one.

25. A characteristic feature of new democratic regimes is that they have decided to compensate, to a varying extent, the victims of the previous, totalitarian regime. In the course of the recent history of Czechoslovakia, there were several such periods. The first wave of restitutions and rehabilitations in the years 1945-1948 was launched to compensate the victims of fascism, the second wave in the years 1968-1969 concerned the victims of Communist reprisals after 1948. Both waves failed to cover all cases and moreover remained uncompleted due to changes on the domestic political scene. The previous rehabilitations and restitutions already belong to the past and the description of their course and results is a task for historians rather than for lawyers.

Judicial rehabilitations

26. In the Czech Republic (as well as in the former Czechoslovakia), widespread rehabilitation and compensation regarding persons unlawfully sentenced and otherwise persecuted under the Communist regime were initiated after November 1989. The fundamental legislation in the criminal sphere was Law No. 119/1990 on judicial rehabilitations as amended by Law No. 47/1991 and by Law No. 633/1992.

27. This legislation is based on the following principles:

(a) Certain previous criminal provisions exactly listed in the law and connected with the former Communistic regime have been declared illegal on the grounds of inconsistency with the principles of a democratic society respecting civil and political rights and freedoms safeguarded by the Constitution and expressed in international instruments and international

legal standards. Consequently, all valid decisions pronounced from 25 February 1948 to 1 January 1990 inclusive were annulled directly by virtue of the law, provided that the acts for which the person was sentenced within the aforesaid period were committed after 5 May 1945 and constituted offences (crimes, criminal offences, misdemeanours, offences) listed in section 2 of the law.

(b) The law enables persons sentenced in the aforesaid period for offences other than those listed in section 2 of the law to call for review of the penalty decision and rehabilitation on the basis of an application for review proceedings submitted within the deadline determined in section 6 of the law, provided that the offences were committed after 5 May 1945 and constituted offences in accordance with section 4 of the law.

(c) The law, moreover, regulates rehabilitation in respect of certain criminal offences committed by persons initially sentenced for an offence which is subject to rehabilitation in the course of their imprisonment or custody.

(d) Part Six of the law regulates compensation and the appropriate procedure in cases of rehabilitation under the law.

28. In addition, a number of laws have been adopted in order to mitigate the consequences of property wrongs committed by the Communist regime from 25 February 1948 to 1 January 1990. The aforesaid period is regarded as the decisive period under all laws concerning restitution and rehabilitation and only wrongs committed within that period may be compensated under the special laws.

29. The first such law was Law No. 403/1990 as amended by Law No. 458/1990 and by Law No. 137/1991. It authorized liable/entitled persons and entities determined in section 3 of the law to provide or be provided with compensation determined in section 2 of the law for the consequences of property wrongs caused to natural persons (as well as legal entities) by deprivation of ownership rights on the basis of Government Decree No. 71/1959 and in connection with nationalization pursuant to the rulings issued by the appropriate ministries after 1955 on the basis of the 1948 nationalization regulations.

30. The most important law in this respect was Law No. 87/1991 on extrajudicial rehabilitation, as amended by a number of subsequent provisions, which regulated the manner, procedure and conditions of mitigation of the consequences of property wrongs and other wrongs caused by civil legal actions, administrative actions or other unlawful actions taken within the period in question. Moreover, this law determined the conditions for presentation of claims regarding annulled decisions on the forfeiture of property or the forfeiture or requisition of an object, as well as the manner of compensation and extent of the claim. On the basis of this law, liable persons and entities (sect. 4) compensated the entitled persons and entities mentioned in section 3 of the law, above all by:

Delivery of the object (sect. 5);

Paying financial compensation (sect. 13).

Moreover, this law addressed certain wrongs committed in the sphere of labour law and social security (sect. 21).

31. Another law concerning restitutions was Law No. 229/1991 regulating ownership of land and of other agricultural property which also mitigated some wrongs committed within the period in question against the owners of agricultural and forest property. Under this law, entitled persons defined in section 4 were compensated, above all by the return of real estate (sect. 6), compensation for buildings which could not be yielded up (sect. 14) and compensation for animate and inanimate chattels (sect. 20), etc.

32. The so-called Large Privatization Law No. 92/1991, as amended, contained some provisions regulating the treatment of claims presented by entitled persons and entities whose property was nationalized within the period in question pursuant to the 1945-1948 nationalization regulations.

33. In the case of all the aforesaid laws concerning restitution, the entitled persons and entities presenting claims were exempt from court and administrative fees.

34. For detailed information on the regulations, see the exact wording of the above-listed laws.

35. The existing Czech regulations comply with the principles of the study in the sphere of civil law, also. The principles are embodied in various regulations, as has already been described above.

36. Principle No. 18 is contained in the provisions of sections 125 and following of the Code of Civil Procedure regarding the rules of evidence.

37. In the sphere of civil procedure, principle No. 20 is embodied in the provisions of sections 152 and following of the Code of Civil Procedure regarding sentences. Section 157 determines rules to be followed regarding sentences and Section 158 determines the deadline for the completion of a sentence.

III.

38. By way of conclusion we may state that the embodiment of the potentially elaborated proposed principles would be acceptable with regard to the general concept of the punishment of human rights violations and rectification of their consequences in Czech legislation. The existing legislation would most probably comply with the principles, above all in the initial period, in the sphere of determination of liability as well as in the sphere of definition of legal claims and their compensation. Differences cannot be ruled out only as regards the amount of compensation. The existing Czech legislation traditionally proceeds from minimalized compensation predominantly reduced to the actual and direct damage. Practice in the sphere of moral compensation is still developing and quantitative assessment of the amount of pecuniary compensation, as perceived in the majority of States in the western hemisphere, will differ accordingly.

Chile

[Original: Spanish]
[19 October 1995]

1. The successive democratic Governments of Chile, besides establishing a climate of respect for all fundamental human rights, have adopted all the measures within their power to shed light on the truth concerning the grave human rights violations committed between 1973 and 1990 and to seek justice, with the aim of achieving genuine national reconciliation.

2. Noteworthy among the measures to achieve justice has been the development of a policy of indemnification and compensation for the relatives of victims of the most serious forms of human rights violation (those resulting in death) and of compensation and support for Chileans who suffered exile.

3. This report sets out, firstly, all the legal and administrative provisions adopted for the purposes of the aforementioned aims. Secondly, it details the general constitutional and legal provisions under which any person who may have suffered a serious violation of his or her rights at the hands of an agent of the State may obtain compensation by reason of the injury sustained.

A. Laws and decrees enacted by the democratic regime to provide compensation for the most serious human rights violations committed under the military regime (1973-1990)

4. The principal legal and administrative provisions adopted by the successive democratic Governments in this matter have been as follows:

1. Supreme Decree No. 355 of the Ministry of the Interior of 25 April 1990

5. The democratic Government of President Aylwin established the National Commission on Truth and Reconciliation with a view to shedding light on the truth regarding the situation of detained persons who disappeared and persons executed or tortured to death, and appearing to involve the responsibility of the State by virtue of acts committed by its agents or by persons in its service; and the truth also in respect of abductions and attacks on the lives of persons committed by individuals on political pretexts during the period of military rule. This Commission was established by virtue of Supreme Decree No. 355 of the Ministry of the Interior of 25 April 1990, which is annexed to this report*.

6. This Commission was given full powers to institute proceedings but not to demand the appearance of witnesses to testify before it. It was expressly barred from deciding on the responsibility of individuals for the acts being

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* Available for consultation in the files of the secretariat.

investigated, it being considered to be the exclusive responsibility of the courts of law to establish the crimes that may have been committed, to identify the guilty parties and to impose penalties.

7. In February 1991, after nine months of work, the members of the Commission delivered to the President of the Republic a report stating that there were 2,279 proven cases of persons having suffered human rights violations resulting in their death between 1973 and 1990, as shown below.

8. The report concluded that extremely serious human rights violations resulting in death had been committed between 1973 and 1990. The cases of which, according to the Commission, there was absolute proof were as follows:

- deaths attributable to agents of the State	1,068
- deaths resulting from the method of detention followed by disappearance	957
- deaths attributable to political violence (during clashes and protests since 1973)	164
- victims of individuals acting on political pretexts (the Commission recognizes that, traditionally, such acts are not regarded as human rights violations)	90
Total	2,279

9. Apart from the cases noted, 614 were unable to be cleared up as the Commission did not have enough information to reach a conclusion.

10. The report ended by proposing a series of measures for the moral and material compensation of the victims and their relatives. It also put forward specific recommendations to guard against human rights violations in the country and consolidate a human rights culture.

11. In the context of these recommendations, the Government submitted a bill with the object of establishing a policy of indemnification and compensation for the relatives of victims and of continuing the investigations with a view to officially establishing cases of human rights violations resulting in death and locating the remains of detained persons who had disappeared. As a consequence, the Act described below was adopted.

2. Act No. 19.123 promulgated by the Government of Chile on 3 January 1992 and published in the Diario Oficial on 8 February of that year

12. Part I of the above-mentioned Act establishes the National Corporation for Compensation and Reconciliation, and Parts II, III, IV and V grant a number of material advantages to specific members of the families of victims of human rights violations.

(a) National Corporation for Compensation and Reconciliation

13. This body operates as a decentralized government service under the supervision of the Ministry of the Interior. It was established for a limited period of 24 months starting on 8 February 1992. This period has been extended up to 31 December 1995.

14. The general aim of this Corporation is laid down in article 1 of Act No. 19.123, which stipulates that "its function will be to coordinate, implement and promote the measures required to give effect to the recommendations contained in the report of the National Commission on Truth and Reconciliation".

15. In pursuance of this mandate, the Governing Council of the Corporation defined its specific tasks, which it has performed through the various programmes mentioned below.

16. One of the functions specially assigned to this body is that of assessing further cases of human rights violations concerning which the National Commission on Truth and Reconciliation did not reach a conclusion for lack of information, or that were not able to be reported to it. Another such function is to take measures to establish the whereabouts of detained persons who disappeared and determine the circumstances of their disappearance. These two tasks are being carried out by the Corporation through the following two programmes.

(i) Programme for the assessment of cases

17. The Corporation was given the responsibility of collecting information and studying it in order to assess the cases of victims of human rights violations not settled by the National Commission on Truth and Reconciliation, owing to lack of information, and of assessing further complaints lodged with the Corporation for that purpose within fixed time-limits.

18. The Governing Council of the Corporation started on this task on 5 August 1992 and completed it on 28 February 1994. At 90 working meetings it examined and reached a decision on a total of 2,188 cases reported. Of this total, 899 cases were declared to be cases in which individuals had sustained injury. In 644 of the cases reported, it was declared that the individuals concerned had suffered human rights violations, and in the other 255 cases, the individuals concerned were characterized as victims of political violence. In the remaining 1,289 cases, no such conclusion was able to be reached as it was considered that there was not sufficient information.

(ii) Programme to investigate the ultimate fate of the victims

19. The object of this programme is to determine the whereabouts of persons who were detained and disappeared and of those whose remains have not been located despite the fact that they have been legally recognized to be dead. In discharging this task, the Corporation has collected, analysed and processed all the relevant information.

20. The number of cases investigated by the team responsible for this programme totals 1,204. To date, 208 cases have been cleared up. Under the statutory extension, the investigation will continue until 31 December 1995. In 105 of the cases cleared up, relatives were able to recover the remains of the victims. In the remainder, despite the fate of the victims being determined on the basis of judicial decisions or administrative measures, for various reasons relatives did not recover the remains.

21. The Corporation cannot assume judicial functions or decide on the responsibility of individuals in cases of detained persons who disappeared. If it learns of facts of a criminal nature, it must bring them to the notice of the courts. However, as part of its work to promote and assist in efforts to locate detained persons who disappeared, and exclusively for that purpose, the President of the Corporation may be a party to judicial investigations. He may also to the same end send the materials and information collected to the courts in the context of proceedings brought by relatives of victims, with a view to locating persons who disappeared and punishing those responsible.

(iii) Programme for moral compensation and for social and legal aid so as to enable those concerned to benefit from Act No. 19.123

22. This programme serves as a permanent source of guidance for the relatives of victims so as to enable them to obtain the special benefits set out below. The Corporation is in constant contact with the various government departments that deliver these benefits so as to ensure that they are actually enjoyed.

23. Among other measures designed to serve the purposes of compensation, the Corporation has entered into an agreement with the Corporation for Legal Aid in order to expedite civil proceedings prior to the award of allowances (e.g. questions of marital status). It has secured allowances on an ex gratia basis for an amount similar to those established by Act No. 19.123, to be granted to common-law wives and adopted children of victims not recognized by the law, who were not included in the aforementioned Act. In addition, it has helped to ensure that special provision is made for disablement, which includes psychological injury, so that relatives can be given assistance in this area.

(iv) Programme for studies and juridical research

24. In order to lend momentum to other recommendations contained in the report of the National Commission on Truth and Reconciliation, the Corporation runs this programme whereby it is able to maintain contact with various bodies conducting studies and research for the purpose of establishing a general basis for proposing reforms to the institutional legal system and ensuring better protection of human rights in the future.

(v) Programme for education and cultural promotion

25. In accordance with the Act establishing it, the Corporation is required to "make proposals for the consolidation of a human rights culture in the country".

26. In this field the Corporation has carried out a number of activities. In particular, it organized a "National Meeting on Ideas and Methods in Human Rights", attended by representatives of human rights institutions in other Latin American countries and educators from various regions in Chile; made a compilation of all suitable materials for human rights education available in the main libraries and study centres in the country, which will ultimately result in a book; organized a national advanced training course for educational supervisors in September 1993, leading to the establishment of human rights teaching centres throughout the country; and held a "national essay competition on human rights, for the annual Professor Jorge Millas prize".

(b) Economic and welfare benefits

27. Another one of the central aims of Act No. 19.123 was to establish the following economic and welfare benefits:

(a) A readjustable monthly allowance for the relatives of the victims mentioned in the report of the National Commission on Truth and Reconciliation and for others whom the Corporation considers to be in the same situation, on the basis of its case-assessment programme. Allowances have been granted with retroactive effect from 1 July 1991 for victims recognized by the Commission. With regard to the relatives of victims recognized as such by the Corporation, allowances run from the time when the Governing Council of that body issues the entitlement. The allowance is granted to the surviving spouse, the lawful mother or father of the victim when there is no surviving spouse, the mother of the victim's illegitimate children or their father when the victim is the mother, children under the age of 25 and disabled children of any age. The allowance is shared among the beneficiaries in accordance with percentages laid down by the law. These percentages are as follows:

- 40 per cent for the spouse;
- 30 per cent for the lawful mother or father;
- 15 per cent for the unmarried mother or father; and
- 15 per cent for each child; and if there are several children, this percentage is given to each one of them even if the total exceeds 100 per cent of the allowance to be shared.

As at September 1995 the amount of the allowance, when there is only one beneficiary, is Ch$ 140,427, equivalent to about US$ 350, and when there are more than one beneficiary, Ch$ 196,611, equivalent to about US$ 490. At that date 4,883 persons were receiving the allowance. These allowances are distributed as follows:

- 1,335 for spouses;
- 1,604 for lawful mothers and fathers;
- 255 for mothers or fathers in respect of their illegitimate child;

- 1,624 for children under the age of 25; and

- 65 for disabled children.

(b) In addition to the monthly allowance, the aforementioned beneficiaries were granted under the Act a lump sum compensation equivalent to 12 times the monthly allowance.

(c) The Act also grants free medical benefits to all beneficiaries and an educational grant to the children of victims, who may also be excused from compulsory military service.

28. The educational grant covers the annual registration fee and the monthly tuition fee for students in middle and higher education (universities and institutes of vocational education), in addition to an educational allowance during the months of the school year. These educational benefits may be applied for up to the age of 35 and may be granted without any age restriction.

29. As at September 1995, 1,015 persons receive these educational benefits, broken down as follows:

185 monthly allowances to students in middle education;

633 registration fees, monthly tuition fees and allowances to students in non-subsidized universities, institutes of vocational education and technical training centres; and

197 registration fees, monthly tuition fees and allowances to students in subsidized universities and institutes of vocational education.

30. The full text of Act No. 19.123 is annexed to this report*.

3. Supreme Decree 294 of 13 March 1991 of the Ministry of Justice

31. In response to a request from the Group of Relatives of Disappeared Detainees and the Group of Relatives of Victims of Political Executions, the Government of Chile on 13 March 1991 promulgated this Decree establishing the "Memorial Foundation for Disappeared Detainees and Victims of Political Executions". The Decree is annexed to this report*.

32. Presided over by a representative of the Ministry of the Interior and composed of members of the Group of Relatives of Disappeared Detainees and the Group of Relatives of Victims of Political Executions and persons of repute in the field of human rights, this Foundation is responsible for the construction of a plaza and a mausoleum in the general cemetery of the City of Santiago, with the object of preserving the historical memory and burying the remains of victims who have been located.

33. The monument was designed by renowned national artists. Its foundation-stone was laid in September 1990 and the plaza has already been built, containing a marble plaque on which are engraved the names of

disappeared detainees and victims of political executions included in the report of the National Commission on Truth and Reconciliation. The work, including the mausoleum, was completed in March 1994. A number of disappeared detainees whose remains have been located are buried there.

4. Act No. 18.994 published in the Diario Oficial on 28 August 1990

34. This Act, which is annexed to this report*, established the National Office for Return (ONR), an autonomous body endowed with its own resources, linked to the Government through the Ministry of Justice, which remained in operation until August 1994.

35. Its chief task was to develop programmes for the reintegration of exiled Chileans returning to the country. For the purposes of the Act establishing the National Office for Return, the following persons were considered to be exiles: persons sentenced to custodial penalties commuted to banishment; deportees or persons required by administrative decision to leave the national territory; those who, after travelling abroad in the normal way, were prohibited from re-entering Chile; those who sought refuge in foreign embassies and were subsequently transferred abroad; those who acquired the status of refugees as recognized by the United Nations or found refuge on humanitarian grounds in the host countries; and also members of the family groups of all those residing or having resided abroad for three years or more.

36. During the three years when the Office was in operation, it served a population of 19,251 returnees, who in combination with their family groups made a total of about 56,000 persons. The main programmes of the Office were as follows:

Validation of professional qualifications obtained abroad;

Delivery of papers for free medical care under the public health system;

Granting of exemption from customs duties for returning exiles;

Administration of special financial appropriations;

Admission into the system of housing allowances.

37. At the present time the Government is studying the possibility of setting up a new body in this area, but one that can address the general phenomenon of migrations and serving also those who were exiled for political reasons, whether they remain in the host countries or decide to return to Chile.

5. Act No. 19.128 published in the Diario Oficial on 7 February 1992

38. This Act, which is annexed to the report*, granted exemption from customs duties for the importation of a vehicle, household goods and working tools for persons of Chilean nationality returning to the national territory and characterized as exiles by the ONR. This Act ceased to be in force at the same date as the ONR ceased to operate.

6. Act No. 19.074 published in the Diario Oficial on 28 August 1991

39. This Act, which is annexed hereto*, authorized persons who had obtained degrees or other qualifications abroad to practise a profession. Since the dismantling of the ONR, which was responsible for this programme, the validation procedure is handled by the regional secretariats of the Ministry of Education.

B. General constitutional and legal provisions recognizing the right to compensation in cases of serious human rights violations

40. The Constitution of Chile expressly provides that individuals have the right to compensation in cases where any of their basic human rights are seriously breached by agents of the State.

41. Accordingly, article 38 (2) of the Constitution, referring to the General Principles of State Administration, stipulates that: "Any person whose rights are infringed by the State Administration, its agencies or the municipal authorities, may lodge a complaint with the courts provided for by the law, without prejudice to the possible responsibility of the public official who caused those rights to be infringed."

42. In addition, State Administration Act No. 18.575 lays down that: "The State shall be responsible for injury caused by the organs of the Administration in the exercise of their functions, without prejudice to the possible responsibilities of the public official who caused such injury."

China

[Original: Chinese]
[22 September 1995]

1. On 4 April 1989, China promulgated its Administrative Procedures Act, which came into force on 1 October 1990. The Act states: "Citizens, bodies corporate or other organizations which consider that their lawful rights and interests have been infringed through the specific action of an administrative organ or employee thereof shall be entitled under this Act to bring proceedings before the people's courts." It also spells out nine specific circumstances in which administrative proceedings may be brought. Among these are: when [the plaintiff] contests a coercive administrative measure restricting his personal freedom or sealing, distraining or freezing his property; when he requests an administrative body to exercise its legal responsibility to protect his personal or property rights and that body refuses or does not reply; and when he considers that an administrative body has violated his personal or property rights.

2. Formerly, the citizen appealed to a higher administrative body, generally in writing and through administrative channels, to deal with the body or employee whose actions had unlawfully violated his rights. The promulgation

and application of the Administrative Proceedings Act now enable him to institute proceedings through judicial as well as administrative channels.

3. Since December 1994, the nation's courts at all levels have together heard 167,882 administrative cases in first or second instance or in supervision of adjudication. Thirty-six per cent of plaintiffs have won their cases.

4. On 12 May 1994, China promulgated the State Compensation Act, which took effect on 1 January 1995. This complements the Administrative Proceedings Act, laying down detailed provisions governing the scope of compensation, the applicant, the body bearing responsibility for compensation, the forms of compensation and criteria for calculation, and the claim procedure.

(a) Scope of compensation

5. The State Compensation Act divides State compensation into administrative and criminal compensation.

6. Administrative compensation refers to the compensation paid for losses resulting from a violation of personal or property rights by an administrative body or employee thereof during the exercise of administrative functions. It includes compensation paid for: illegal detention or illegal imposition of administrative measures of coercion, restricting a citizen's personal freedom; unlawful taking into custody or unlawful deprivation of a citizen's personal freedom by other means; bodily injury to or the death of a citizen, resulting from beating or other such violent behaviour, or from incitement to others to engage in beating or other such violent behaviour; illegal use of a weapon or truncheon, causing bodily injury to or the death of a citizen; other illegal behaviour causing bodily injury to or the death of a citizen; illegal imposition of administrative penalties such as fines, revocation of permits and licences, instructions to halt production or close down, or confiscation of property; illegal application to property of administrative measures of coercion such as placing under seal, distraint or freezing; imposition of levies or apportionment of costs in breach of State regulations; and other illegal behaviour causing injury to property.

7. Criminal compensation refers to the compensation paid for losses resulting from a violation of personal or property rights by a body exercising detective, investigative, judicial or prison-management functions or an employee thereof. It includes compensation paid for: mistaken detention of an individual in the absence of a corpus delicti or of strong grounds for suspecting that a crime has taken place; mistaken arrest of an individual in the absence of a corpus delicti; a conviction annulled on appeal under the procedures for supervision of court proceedings when the original sentence has already been put into effect; extraction of a confession by torture, beating or other such violent conduct, or incitement of a third party to engage in beating or other such violent conduct, causing bodily injury to or the death of a citizen; illegal application to property of measures such as sealing, distraint, freezing or seizure; and a conviction annulled on appeal under the procedures for supervision of court proceedings when the original fine or confiscation of property has already been put into effect.

(b) The applicant for compensation and the body bearing responsibility for compensation

8. Applicants for compensation may be citizens, bodies corporate or other organizations that have suffered injury. If a citizen who has suffered injury dies, his heir(s) or other person(s) he formerly provided for are entitled to apply for compensation; if a body corporate or other organization that has suffered injury ceases to exist, the successor body or other organization is entitled to apply.

9. The body bearing responsibility for compensation is the administrative, detective, investigative, judicial or prison-management body during the exercise of whose functions by it or an employee thereof the lawful rights and interests of a citizen, body corporate or other organization were violated, causing injury; if the combined exercise of administrative functions by two or more administrative bodies violates the lawful rights and interests of a citizen, body corporate or other organization, causing injury, those bodies bear combined responsibility for compensation; if an organization exercising administrative authority conferred upon it by law or regulation violates the lawful rights and interests of a citizen, body corporate or other organization, causing injury, that organization bears responsibility for compensation; if an organization or individual exercising administrative authority entrusted to it/him by an administrative body violates the lawful rights and interests of a citizen, body corporate or other organization, causing injury, the body that entrusted such authority bears responsibility for compensation. If the body bearing responsibility for compensation is abolished, the administrative body that takes over its functions bears responsibility for compensation; if no administrative body takes over its functions, the abolishing body bears responsibility for compensation. If a measure is revised by a reviewing body, the administrative body whose action originally caused the violation of rights bears responsibility for compensation, but if the reviewing body decides to increase the damages, it is responsible for the increased portion. A body mistakenly ordering the detention of an individual in the absence of a corpus delicti or of strong grounds for suspecting that a crime has taken place bears responsibility for compensation; a body mistakenly ordering the arrest of an individual in the absence of a corpus delicti bears responsibility for compensation. In the event of a conviction annulled upon appeal, the people's court that issued the original judgement bears responsibility for compensation; in the event of a conviction annulled upon retrial, the people's court that issued the initial judgement and the body that ordered the arrest bear combined responsibility for compensation.

(c) Forms of compensation and criteria for calculation

10. State compensation principally takes the form of money. Where a citizen's personal liberty has been violated, the compensation paid per day is calculated on the basis of average daily earnings by State workers over the preceding year. Where a citizen's right to life or health has been violated,

causing bodily injury, the costs of medical treatment must be paid together with compensation for income lost owing to time off work. If partial or total loss of capacity to work has resulted, the costs of medical treatment must be paid together with disability compensation. If the loss of capacity to work is total, the living expenses of any persons incapable of work who were [formerly] provided for by the victim must also be paid. If death has been caused, compensation and funeral expenses must be paid, together with the living expenses of any persons incapable of work who were formerly provided for by the deceased. If injury has occurred as a result of a violation of property rights, the property must be returned or restored to its former condition wherever possible; if it cannot be returned or restored, compensation is made in the form of money.

(d) Compensation procedure

11. Application for compensation must initially be made to the body bearing responsibility for compensation. That body must within two months of receiving the application award compensation as prescribed by law. If the compensating body is a people's court, application for a compensation order may be made to the compensation committee of the people's court at the next level. If compensation is not awarded within the prescribed time or if the applicant objects to the amount of compensation, the applicant may within 30 days of the expiry of the prescribed period request a review by a body at the next level. The reviewing body must issue its decision within two months of receiving such a request. If the applicant objects to the reviewing body's decision, he may within 30 days of receiving it request the compensation committee of a people's court in the locality of the reviewing body to issue a compensation order. If the reviewing body does not issue a decision within the prescribed time, the applicant may also, within 30 days of the expiry of the prescribed period, request the compensation committee of a people's court in the locality of the reviewing body to issue a compensation order.

12. In January 1995, the State Council of the People's Republic of China issued instructions on handling the expenses of the State Compensation Act, setting forth specific provisions on the sources and management of such expenses, guaranteeing the right of citizens, bodies corporate and other organizations to receive State compensation and promoting the lawful performance of their functions by State bodies. Every intermediate and higher people's court has now established a compensation committee to exercise the power of final arbiter in criminal compensation devolving on it by law.

13. Application of the State Compensation Act has shifted State compensation from reliance on policy to reliance on the law, improving the compensation system and safeguarding compliance with the Constitution. Chinese administrative, detective, investigative, judicial and prison-management departments at all levels and related circles are actively studying the Act and publicizing its provisions to citizens, corporations and other organizations so that they will in future use it to protect their own interests.

Colombia

[Original: Spanish]
[31 July 1995]

1. The Government of Colombia, in fulfilment of its commitments with regard to the promotion and protection of human rights, has submitted to the Congress of the Republic for consideration a bill establishing instruments to provide for compensation for victims of violations of human rights.

2. This bill, a copy of which is attached for information*, was introduced with a view to filling a gap that existed in Colombian domestic law inasmuch as there was no proper instrument to put into effect decisions adopted by international bodies recommending the payment of compensation for violations of human rights.

3. On 9 September 1994, on the occasion of National Human Rights Day, the President of the Republic, Dr. Ernesto Samper Pizano, undertook to submit to the Congress of the Republic for its consideration a bill authorizing the Government to charge to the national budget any payment of compensation or indemnity for human rights violations ordered by intergovernmental human rights bodies.

4. The Head of State, reiterating his willingness to implement the decisions taken by international bodies, also accepted the conclusions of the committee of inquiry into acts of violence by Trujillo set up at the request of the Inter-American Commission on Human Rights, again pledging himself to introduce the above-mentioned bill in compliance with the recommendations contained in that committee's report.

5. It should be noted that article 2 of the bill refers to decisions taken by the Human Rights Committee and by the Inter-American Commission on Human Rights, bodies which have been recognized by Colombia as competent in the matter.

6. In principle, it is established that the Government shall be required to pay compensation for injuries caused by human rights violations in respect of which express decisions have been taken or will be taken by the two bodies referred to.

7. Because such decisions are usually couched in terms that do not specify either the beneficiaries of the compensation or the amount thereof, the bill provides in the first instance for conciliation, a formula which can be applied expeditiously and easily, and which subsequent regulations can set within a short-term framework, to the benefit of persons having a legitimate interest in the payment of the compensation concerned.

8. In order to cover decisions adopted prior to the entry into force of the norm, paragraph 6 of the above-mentioned article provides for the possibility

of recourse to conciliation, even when the measures provided for under domestic law for obtaining compensation for human rights violations are no longer valid, provided that the requirements of this norm are met.

9. Furthermore, the bill invests any order calling for conciliation made by a judge of the Litigation and Administration Department with full judicial status, so as to guarantee payment of the compensation concerned.

10. The Second Committee of the Senate of the Republic, which is responsible, inter alia, for foreign policy, national defence, the police forces, foreign trade and economic integration, on being presented with the bill submitted by the Government, approved it on first reading.

11. It is hoped that, in accordance with the constitutional procedure for the adoption of legislation, the bill will be discussed and approved in second reading before the plenary meeting of both Houses, which will take place at the next session, as provided for under article 162 of the Constitution, and then go on to obtain government sanction.

Ghana

[Original: English]
[21 September 1995]

The Government of Ghana submitted a copy of chapter 5, articles 12 to 33 of the 1992 Constitution of Ghana and the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)*.

Mauritius

[Original: English]
[25 October 1995]

No legislation is under preparation at present. The following legislation, however, has already been adopted by the Government of the Republic of Mauritius:

(i) Section 17 of the Constitution of the Republic of Mauritius*;

(ii) Article 1382 of the Civil Code which allows a victim to sue his alleged tortfeasor for damages*;

(iii) Article 1384 of the Civil Code which allows a victim to sue the employer of an alleged tortfeasor. This article can prove to be important when the alleged tortfeasor is an agent or officer of the Government purporting to act within the scope of his duties*;

(iv) The Ilois Trust Fund Act 1982, which deals with payment of compensation to the population which was removed from the Chagos Archipelago*.

Namibia

[Original: English]
[18 July 1995]

1. There are appreciably adequate constitutional and legislative measures in place to ensure to a marked degree that persons who alleged human rights abuses are able to seek redress in the courts. Workers for instance are able to protect their human rights this way by reporting alleged violations to their trade unions leaders, who promptly take the necessary action in the matter. Many individuals approach such non-governmental organizations as the Legal Assistance Centre to seek redress on their behalf in the courts. The Legal Assistance Centre complements the work of the State-sponsored Legal Aid Directorate of the Ministry of Justice in this regard. Indigent persons who take advantage of the Ministry of Justice's legal aid scheme pay virtually no fees towards their legal assistance and representation. The same is true for the Legal Assistance Centre's scheme.

2. In addition to these facilities, a great number of people approach the Ombudsman for assistance where they allege human rights violations.

3. Whether the alleged violators are private individuals or public servants the Ombudsman has always acted on such complaints to satisfy the victims. Indeed, where the alleged violation has attracted media coverage or where the alleged violation comes to the attention of the Ombudsman through any other means, the Ombudsman may exercise his or her constitutional power to investigate the alleged violation mero motu.

4. There are no special schemes over and above the judicial and quasi-judicial methods to deal with human rights violations. It must be noted that the High Court, dealing with a complaint of a human rights violation, can make any award in a successful claim, and the award may take any form the court deems fit, including restitution, compensation and the rehabilitation of the victim.

Nepal

[Original: English]
[25 July 1995]

The Government of Nepal has already drafted a bill relating to restitution, compensation and rehabilitation of victims of human rights violations and has tabled it in Parliament for adoption and legislation. It is hoped that the bill will be passed during the forthcoming parliamentary session and be enacted and enforced. The future act will certainly protect and preserve the rights of detainees and prisoners against torture and other inhuman/degrading treatment and punishment in prisons.

Sweden

[Original: English]
[25 October 1995]

1. There is no specific Swedish legislation aimed at guaranteeing victims of serious human rights crimes the right to compensation.

2. However, there are laws in Sweden that can be applied for such purposes. The following Acts may be mentioned in this context:

The Tort Liability Act (1972:207):

Chapter 3 concerns the liability of employers and of the State and municipalities;

Chapter 3, section 2, should be noted in particular. This section deals with the liability of the State or a municipality to pay compensation for any loss of life, personal injury, or damage to property and financial loss which has been caused by a wrongful act or omission in the course of, or in connection with, the exercise of public authority;

The Act concerning Damages for the Restriction of Liberty (1974:515);

The Data Act (1973:289):

Section 23 concerns the right to compensation for, amongst other things, damage suffered because a personal file contains incorrect or misleading information.

Philippines

[Original: English]
[26 October 1995]

The Government of the Philippines transmitted the following documents*:

(a) A primer on the law creating the Board of Claims, which contains the text of Republic Act No. 7309 of 22 July 1991 (an Act creating a Board of Claims under the Department of Justice granting compensation for victims of unjust imprisonment or detention and victims of violent crimes);

(b) Copies of six bills proposed in the Congress of the Philippines, which relate to the subject:

House Bill No. 795 defining the liability of heads of departments concerned for gross violations of human rights committed by members of the Philippine National Police or other law enforcement agencies;

House Bill No. 871 granting benefits for death or injuries suffered by civilians in the course of military or police operations;

House Bill No. 1111 providing reasonable compensation and benefits for loss of life, injuries and damage to property suffered by non-combatant individuals in the course of military or police operations;

House Bill No. 1127 providing for a mandatory course on human rights for all officers, members and trainees of the armed forces of the Philippines, the Philippine National Police, the National Bureau of Investigation and other law enforcement agencies;

House Bill No. 1452 strengthening the Commission on Human Rights, expanding its functions;

House Bill No. 1478 increasing the compensation awarded by the State to victims of unjust imprisonment or detention and violent crimes.

Sudan

[Original: Arabic]
[26 October 1995]

The legislative enactments dealing with the subject of Commission on Human Rights resolution 1995/34 are as follows:

(a) The Code of Criminal Procedure of 1991, which calls for observance of the principles concerning decent treatment and respect for the human personality of arrested persons and guarantees their right to medical care, their right not to be restricted in their liberty except to the necessary extent and their right to contact a lawyer. Failure to observe these principles invalidates the procedures and makes the arrest equivalent to unlawful detention, in which case the victim is entitled to institute civil proceedings for compensation in respect of the detriment suffered.

(b) (i) Article 64 of the Code of 1991 designates the incitement of hatred against or between communities as a punishable criminal offence. Article 127 further designates the desecration of places of worship as a criminal offence and prescribes the penalty therefor. Articles 161, 162 and 163 designate enticement, abduction and forced labour as offences involving deprivation of liberty and prescribe the penalties therefor. Articles 164 and 165 deal with unlawful arrest and detention, while article 166 deals with the offence of violation of privacy, for which it prescribes specific penalties. When imposing penalties, the Criminal Court may decide to compensate the victim by exercising civil jurisdiction, especially while hearing offences involving violations of human rights.

(ii) It is intended to amend article 64, in accordance with a recommendation from the Advisory Council on Human Rights, in such a way a to designate racial discrimination and advocacy of the supremacy of a particular race, ethnic group or community as a criminal offence.

(c) A provisional legislative decree (the National Security Act) promulgated in 1995 guarantees the basic rights of accused persons, the duration of whose detention for purposes of investigation and interrogation must not exceed 72 hours (art. 36). In order to ensure the proper

implementation of this Act, it is stipulated that the President of the Republic is responsible for supervising its enforcement (art. 10, para. 3). Article 50 of the Act prescribes the penalty for abuse of authority and exploitation of an official post. Although provision is made for the immunity of security officers and personnel, the victim has a recognized right to compensation.

(d) The Code of Civil Procedure of 1984 (the Civil Code) makes provision for compensation on the ground that detriment creates an entitlement to compensation if culpability is established. Article 160 makes provision for liability in respect of personal or job or occupation-related detriment and frivolous or negligent performance of duties. It is not surprising that the State holds its employees accountable for their performance on the basis of the superior/subordinate theory, particularly if the detriment constitutes a violation of human rights.

(e) The Seventh Constitutional Decree, which has already been promulgated, specifies the basic rights of citizens which, if infringed, give rise to an entitlement compensation.